Lafayette Redevelopment Agency Staff Report

For:	Lafayette City Council
By:	Tony Coe, Engineering Services Manager Malathy Subramanian, City Attorney
Date Written:	January 20, 2009
Meeting Date:	January 26, 2009
Subject:	Amendment of Critical Solutions, Inc.'s Professional Services Agreement for the Library and Learning Center Project

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Introduction/Background

Critical Solutions, Inc. (CSI) was selected in 2003 to serve as the Agency's consultant to advise and manage various processes to develop, design, and construct a new library. CSI's work began with the first phase of the project, namely the construction and relocation of the Veteran's Memorial Building. Subsequently, CSI has been involved in the design development up to bidding of the construction contract of the new library. CSI has also continued to advise the City on matters related to the State Grant that partially funds the project, and the public art component. There is now a need to amend CSI's contract to include construction management services to complete the project.

Discussion

The amended agreement and scope of services are attached for Agency Board's review. In summary, CSI will augment the Agency's construction management team and assist in resolution of issues related to scheduling, change orders, and other related potential disputes. Given that CSI has been involved in the project from its initial phases, and thus has significant history, experience, and familiarity with the issues involved; and based on the in-progress status of the construction work, it would be neither practical, timely, nor in the public interest to obtain new proposals for the subject services at this time. As such, staff recommends Agency's approval to amend CSI's agreement to provide these services.

Fiscal Impact

CSI's fee for the construction management services is about $683,175. CSI's contract for the Library Phase would be amended from $501,500 to not exceed $914,200 to incorporate the additional fee. The fee increase is partially offset by previously authorized fee that has remained unbilled to date.

Recommendation

Agency adopts the attached resolution to make the findings that obtaining new proposals for construction management services on the Lafayette Library and Learning Center Project would be impractical and to amend Critical Solutions, Inc.'s professional services agreement for the Project.

Attachments

Resolution RDA 2009-02

BEFORE THE LAFAYETTE REDEVELOPMENT AGENCY
IN THE MATTER OF:

Finding that Obtaining Other Proposals for the Provision of Construction Management Services for the Lafayette Library and Learning Center Project Would be Impracticable, and Amending the Existing Professional Services Agreement with Critical Solutions, Inc.	))))))	Resolution No. RDA 2009-02

WHEREAS, the Redevelopment Agency of the City of Lafayette ("Agency") has undertaken a project to construct the Lafayette Library and Learning Center at 3491 Mount Diablo Boulevard, Lafayette, California ("Project");

WHEREAS, Critical Solutions, Inc. ("CSI") was selected in 2003 to serve as the Agency's consultant to advise and manage various processes to develop, design, and construct a new library; and

WHEREAS, in December 20, 2004, the Agency and CSI executed a professional services agreement whereby CSI would perform services in design development up to bidding of the construction contract for the Project ("Agreement"); and

WHEREAS, in June 4, 2007, the Agency and CSI amended the Agreement to provide for quality control inspection services; and

WHEREAS, there is a need to amend the Agreement further to include construction management services in order to complete the Project; and

WHEREAS, CSI has been involved in the Project from its initial phases, and thus has significant history, experience, and familiarity with the issues involved; and based on the in-progress status of the construction work, it would be neither practical, timely, nor in the public interest to obtain new proposals for the construction management services at this time;

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The above recitals are true and correct.

2. The Agency finds that obtaining new proposals for the provision of construction management services for the Project would be impracticable for the reasons stated above and therefore authorizes amending the Agreement according to the terms and conditions set forth in the Amendment dated _____, a copy of which is attached to this Resolution.

PASSED AND ADOPTED by the Redevelopment Agency of the City of Lafayette at a regular meeting held on the _____ days of _____, _____, by the following vote to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

APPROVED:

_____
_____, Chairman

ATTEST:

_____
Joanne Robbins, City Clerk

APPROVED AS TO FORM:

_____
Best Best & Krieger, LLP
Agency Counsel

AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES FOR THE LAFAYETTE LIBRARY & LEARNING CENTER PROJECT

This Amendment ("Amendment") to the December 20, 2004 Agreement for Professional Services for the Lafayette Library & Learning Center Project ("Agreement") is entered into on [DATE] by and between the Lafayette Redevelopment Agency ("Agency"), a public body, corporate and politic, and Critical Solutions, Inc., a California corporation, ("Consultant").

RECITALS

A. The Agency is undertaking the Lafayette Library & Learning Center Project ("Project") and has selected Consultant to provide professional services based on Consultant's experience and knowledge, particularly with the procedures and requirements of library development and construction and the State Office of Library Construction.

B. The Agency and Consultant executed the Agreement whereby Consultant would provide design review, assistance with grant funding, and bidding document preparation services for the Project.

C. In June 2007, the Agency and Consultant amended the Agreement to provide for on-site quality control inspection services.

D. The Agency requires professional construction management services for the Project and has requested Consultant to provide such services beginning on November 24, 2008. Consultant has not provided construction management services for the Project prior to November 24, 2008 and had a limited role in the bidding, contracting, and construction phases.

E. A dispute has arisen between C. Overaa & Co. ("Overaa") and Agency regarding Project progress and performance, namely claims of time and monetary damages related to alleged construction delays resulting in extended overhead costs up to and including [DATE] ("Overaa Dispute"). Overaa and Agency are in discussions regarding the Overaa Dispute and expect to reach an agreement resolving the Overaa Dispute ("Settlement") by January 31, 2009, or soon thereafter.

F. Consultant has significant experience and familiarity with the Project as well as the requisite expertise and qualifications to provide the requested construction management services.

NOW, THEREFORE, in consideration of mutual promises, the Agency and Consultant ("parties") amend the Agreement as follows:

1. Services of Consultant.

   Subject to the terms and conditions set forth in the Agreement and as modified by this Amendment, Consultant shall provide Agency construction management services for the Project, as more fully described in Exhibit A ("Scope of Services"), which is attached and made a part hereof.

2. Compensation.

2.1. Agency shall pay compensation to Consultant for performance of the Scope of Services in accordance with the fee schedule included in Exhibit A, with the total compensation not to exceed $628,000.

2.2. The total compensation payable to Consultant for the provision of professional services under the Agreement and all subsequent amendments shall not exceed $859,000.

3. Term of Agreement.

The term of the Agreement shall be from December 20, 2004 until the completion of the Scope of Services, unless sooner terminated by the parties under the provisions of the Agreement.

4. Indemnification.

Section 5, Indemnification, of the Agreement shall not apply with respect to the Consultant's performance of the Scope of Services and the following indemnification provision shall apply instead:

Consultant shall indemnify and hold harmless Agency, its officers, officials, directors, employees, agents and volunteers from and against all claims, damages, losses and expenses including attorney fees arising out of the performance of the services described herein, to the extent caused by any negligent act or omission or willful misconduct of Consultant, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable ("Liabilities"), except where caused by the negligence or willful misconduct of Agency. Consultant's indemnification obligation hereunder shall not extend to that portion of Liabilities that arose prior to November 24, 2008.

Agency shall indemnify, defend, and hold harmless Consultant, its officers, officials, directors, employees, agents and volunteers from and against all claims, damages, losses and expenses arising out of work performed for the Project prior to November 24, 2008, except where caused by the negligence or willful misconduct of Consultant.

If the Settlement is not reached, Agency shall also indemnify, defend, and hold harmless Consultant, its officers, officials, directors, employees, agents and volunteers from and against all claims, damages, losses and expenses on account of the Overaa Dispute.

5. Exhibits.

The following exhibit is attached and incorporated herein by reference:

A. Scope of Services for Construction Management Services
B. Fee Budget for Scope of Services
C. December 20, 2004 Agreement
D. June 4, 2007 Amendment of Authorized Compensation

6. Remainder of Agreement Is Still in Effect.

This Amendment modifies only those specific terms of the Agreement referred to herein and all other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment the day, month and year first above written.

AGENCY
Lafayette Redevelopment Agency

By: _____ Date: _____
Steven B. Falk, Executive Director

CONSULTANT
Critical Solutions, Inc.

By: _____ Date: _____

CONSTRUCTION MANAGEMENT SCOPE OF SERVICES

4.0 **Global Settlement:** CSI's senior management will work with the General Contractor, C. Overaa, and the City of Lafayette in an effort to reach a global settlement of disputed issues related to both time and direct costs. The global settlement would include: a project time extension, which will incorporate both compensable and non-compensable time extensions, and include a new final completion date; all costs associated with delays and impacts, including subcontractors' costs, up to an agreed-to date; all direct cost issues, including subcontractors, settled up to an agreed-to date; and all costs for known future impacts as of an agreed-to date. As of the global settlement agreed-to date, the project will have a new completion schedule, prepared by C. Overaa, reflecting the global settlement time extension. CSI will give its best effort to facilitate a global settlement, but cannot guarantee a global settlement will be reached between the City and C. Overaa.

4.1 **On-Site Construction Management**: Provide continuous, on-site construction management services from December 4, 2008 through anticipated Final Completion of the project, as shown on our staffing and fee schedule. CSI on-site project management will consist of a full-time Construction Manager and Change Order Specialist, supported by senior personnel in CSI's home office. CSI will also manage current city employees and consultants assigned to the project. CSI will report to the Lafayette City Engineer.

4.2 **Daily Reports:** Prepare daily observation reports that include the status of on-site construction activities. The reports will be included in a the City of Lafayette database

4.3 **Contractor's CPM Schedule:** Review, monitor and comment on the Contractor's monthly updates.

4.4 **Progress and Pre-Construction Meetings:** Conduct weekly progress meetings with the City, Contractor and the Architect to review the status of the work. Conduct pre-construction meetings with the Contractor and its subcontractors prior to the start of each subcontractor's scope of work. Prepare and distribute meeting minutes of both progress and pre-construction meetings.

4.5 **Contractor Request for Information (RFI):** Review RFIs prior to submittal to the Architect and prior to returning to the Contractor to make sure a complete question and answer has been presented.

4.6 **Contractor Submittals:** Review submittals prior to transmittal to the Architect to determine if the submittals are in general compliance with submittal requirements. Review the submittals returned by the Architect to determine if potential changes have been made by the Architect through the submittal process and address accordingly with the Architect and Contractor.

4.7 **Contractor Request for Change:** Review and respond to request by the Contractor for additional compensation and/or time. Provide recommendations to the City regarding entitlement, cost and time. Prepare change order documents for approval by the Contractor and the City.

4.8 **City Requested Changes:** Distribute City Requested Changes to the Contractor for pricing. Review and negotiate the cost with the Contractor. Provide recommendations to the City regarding both cost and time as appropriate.

4.9 **Project Documents:** Maintain a file on site of all construction correspondence, change orders, submittals, and other documents issued. Record change orders on the conformed set of construction' documents by clouding the areas impacted by change orders and referencing the change order number.

4.10 **Contractor Payment Applications:** Review the Contractor's payment application with the Contractor. Obtain approvals by all parties and distribute to the City for final approval and processing.

PROJECT CLOSEOUT SERVICES

5.1 **Punch-List:** Coordinate the preparation of a comprehensive punch list that includes input from the City, Architect and other key participants. Monitor the completion of punch list items and provide updated punch list logs to the Contractor, City, Architect and other key participants.

5.2 **Close-Out Documents:** Obtain from the Contractor all close-out 'documents required by the Contract Documents, including but not limited to O&M manuals, as-built documents, attic stock, and warranties. Distribute to the Architect and the City as appropriate for review and acceptance.

5.3 **Close-out Change Orders:** Review and settle all open change orders that remain with the Contractor. Provide advice and recommendations to the City regarding any change orders regarding cost or time that cannot be resolved without proceeding through the claims process (e.g., mediation, arbitration or formal court litigation). The Consultant's scope of work specifically excludes services to prepare for any claim process noted above: Such efforts by the Consultant would be considered additional services and a change to the Contract between the City and the Consultant

5.4 **Final Completion:** Provide recommendations and advise the City regarding Final Completion and Final Payment.

Critical Solutions

City of Lafayette
Lafayette Library and Learning Center
Staffing & Fee Proposal

Name	Position	2008		2009										Total Hours	Hourly Rate	Total Amount
Project/Construction Management		Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct			
Ron Johnson	Principal in Charge	8	9	60	60	4	4	4	4	4	4	4	4	169	$190	$32,110
Tom Hedges	Senior Project Manager	80	44	80	80	30	30	30	30	30	30	30	30	524	$180	$94,320
Kelly Johnson	Senior Construction Manager	25	174	164	164	164	164	164	164	164	164	164	164	1,839	$165	$303,435
Maxine Harrington	Construction Manager	108	146	164	164	164	164	164	164	164	164	164	164	1,894	$115	$217,810
Phil Heathwood/Bob Artnsen	Estimator		50	60	30									140	$115	$16,100
Gordon Johnson	Project Engineer/Scheduler		4	40	40	10	10	10	10	10	10	10	10	164	$100	$16,400
															Labor	$680,175
															Project Reimbursable	$3,000
															Total Management Fee	$683,175

Prepared By: Critical Solutions, Inc.

1/21/2009